COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1)Appeal from Order No. 18 of 2004

Prakash Chandra Semwal.

…. **Appellant.**

Versus

New India Assurance Co.Ltd.
and others. ….. **Respondents.**

(2)Appeal from Order No. 17 of 2004

Prakash Chandra Semwal.

…. **Appellant.**

Versus

New India Assurance Co.Ltd.
and others. ….. **Respondents.**

(3)Appeal from Order No. 19 of 2004

Smt. Kusum & another.

…. **Appellant.**

Versus

New India Assurance Co.Ltd.
and others. ….. **Respondents.**

And

(4)Appeal from Order No. 20 of 2004

Smt. Kusum & another.

…. **Appellant.**

Versus

New India Assurance Co.Ltd.
and others. ….. **Respondents.**

Coram : Hon'ble P.C. Verma, J.,
Hon'ble B.S. Verma, J.

Heard. Delay is condoned. All these appeals are admitted.

All these appeals arise out of the same motor accident, the claimant-appellants belong to the same family and common questions are involved for determination in the appeals, therefore, all the four appeals are being decided by this common judgment.

All appeals has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and award dated 25-09-2003 passed by the Motor Accident Claims Tribunal, Chamoli ***(in short the Tribunal),*** in M.A.C. Case Nos.72 of 2001, Prakash Chandra Semwal Vs. New India Assurance Co. Ltd. & others, 74 of 2001, Prakash Chandra Semwal Vs. New India Assurance Com. Ltd. & others, No. 73 of 2001, Smt. Kusum & another Vs. New India Assurance Com. Ltd. & others and No. 71 of 2001, Smt. Smt. Kusum & another Vs. New India Assurance Co. Ltd. In all the four claim petitions, the learned Tribunal has awarded compensation in favour of the claimants worth Rs. 1,20,000/-, Rs. 1,22,6000/-, Rs. 1,50,000/- and Rs. 1,50,000/- along with interest @ 9% per annum against the O.P.-respondent no.1. Aggrieved, the claimants-appellants have come up in appeal before this Court with a prayer to set aside the impugned judgment and awards and to enhance the amount of compensation mainly on the ground that the longevity of life of the deceased was not considered by the Tribunal and the loss of income has not been properly calculated.

Brief facts, giving rise to the present appeals, are that on 27.6.2001, the mother, Smt. Parsadi Devi, father, Raghubar Datt, son Ganesh and daughter Km. Dibya alias Sabbu of claimant Prakash Chandra Semwal have died as a result of grievous injuries sustained by them in a motor accident involving passenger bus No. UP 05-0537 due to rash and negligent driving by its driver. Another claimant-appellant Smt. Kusum is the wife of said Parakash Chandra

Semwal. It has been alleged in the claim petition that on the fateful day, all the four deceased and Km. Deepa, who is sister of claimant Prakash Chandra, were going by aforesaid bus to attend a marriage ceremony. About 2 kms. ahead of place Simali towards Tharali, the said bus met with an accident due to rashness sustained injuries and consequently died, hence the claim petitions have been preferred for compensation.

Both the opposite parties have contested the claim petitions by filing their written statements. O.P. 1-Insurance Company has asserted that the bus was being driven in violation of policy conditions. O.P. No.2, the owner of the vehicle, has pleaded that the bus was being driven by a skilled driver holding a valid driving licence at the time of accident, therefore, the Insurance Company is liable to pay the compensation.

The learned Tribunal necessary Issues in the case. Ultimately, the Tribunal has come to the conclusion that the accident in question resulting into injuries and consequent death of the deceased persons was caused due to rash and negligent driving on the part of the ill-fated bus and the accident was not caused due to technical fault in the bus. It has also been held that the bus involved in the accident was duly insured with the O.P.No.1. Finally, the Tribunal has awarded compensation in favour of the claimants by the impugned judgment and awards, as mentioned earlier.

We have herd learned counsel for the claimant-appellants, Mr. M.S.Chauhan, Advocate, as well as learned counsel for the respondent no.1-Insurance Company, Mr. M.K.Goyal, and have carefully gone through the entire material on record.

The learned counsel for the appellant has submitted before us that the lenred Tribunal has not applied the suitable multiplier for determining the amount of compensation. We have

been referred to impugned award passed in M.A.C. Claim Petition No. 72 of 2001, in which the Tribunal has applied multiplier of 7 to work out the total amount of compensation for the death of Smt. Parsadi Devi. It has been submitted that the deceased Parsadi Devi was in the age group of 50-55 years at the time of her death, therefore, the multiplier of 7 has wrongly been applied. We have gone through the entire record. The argument of the learned counsel for the appellant has force. In the instant case, the lenred Tribunal has itself determined the age of the deceased to be 55 years. The claimant has file extract of family register, paper no. 12-C, which also goes to show that the deceased was 55 years of age. The age of the deceased has been mentioned as 50-55 years by the claimant, therefore, the deceased comes in the age group of 50-55 years and according to Second Schedule of Section 163-A of the Act, in our opinion, multiplier of ***11*** ought to have been applied to work out just amount of compensation in A.O. No. 18 of 2004 for the death of the deceased Smt. Parasdi Devi. Thus, considering the annual of loss of dependency as held by the Tribunal, i.e. Rs. 16,800/-, the total loss of dependency comes to 16,800/- x 11 = Rs. 1,84,800/. The Tribunal has also awarded sum of Rs. 2,400/- towards funeral expenses, thereby the total amount of compensation comes to Rs. ***1,87,200/-*** instead of Rs. ***1,20,000/-,*** as awarded by the learned Tribunal.

The learned counsel for the appellant has submitted that in A.O. No. 17 of 2004, the Tribunal has not awarded any amount towards loss of love and affection, physical and mental agony, etc. and the multiplier of 5 has wrongly been applied for the death of father of the claimant, Sri Raghubar Datt. We have gone through the entire record. The Tribunal has held the age of the deceased to be 65 years. It has been held by the Apex Court in the case ***of "U.P. State Road Transport Corpn. And others Vs. Trilok Chandra and others" [1996) 4 Supreme Court Cases 362)*** that the Second Schedule of Section 163-A of the Motor Vehicles Act, 1988 suffers from several defects and it may be used as guide. Considering the

facts and all the circumstances of the case, we are of the opinion that the multiplier of 6 ought to have been applied instead of 5 for determination of just compensation for the death of deceased Raghubar Datt, especially when the Tribunal has not awarded any sum towards loss of love and affection, etc. In this accident, the claimant Prakash Chandra Semwal has lost his mother, father, son and daughter. We are, therefore, inclined to apply multiplier of ***6*** instead of ***5*** in the instant case, thereby the total amount of compensation comes to Rs. 24,000/- x 6 = Rs. 1,44,000/-. The Tribunal has already awarded Rs. 2,400/- towards funeral expenses and interest @ 9% per annum. Thus, the amount of compensation now comes to Rs. ***1,46,400/-*** instead of Rs. ***1,22,600/-,*** as awarded by the learned Tribunal. ***Rest of the findings recorded by the learned Tribunal in M.A.C. Case Nos. 72 of 2001 and 74 of 2001, Prakash Chandra Semwal Vs. New India Assurance Co. Ltd. & others, shall remain undisturbed.***

So far as compensation in respect of death of Ganesh, aged 4 years, and Km. Dibya alias Sabbu, aged 7 years in A.O. Nos. 19 of 2004 and 20 of 2004 respectivey is concerned, we are of the opinion that the Tribunal has determined just compensation of Rs. 1,50,000/- for death of these two children. Accordingly, findings of the lenred Tribunal do not call for any interference by this Court in these two cases. Accordingly, Appeal Nos. 19 of 2004 and 20 of 2004, preferred by Smt. Kusum and another, deserve to be dismissed.

In view of the discussion aforementioned, A.O. No. 18 of 2004 and A.O. No. 17 of 2004, Prakash Chandra Semwal Vs. New India Assurance Co. Ltd. are partly allowed. The impugned awards dated 25-9-2003 stand modified as mentioned above. No order as to costs.

A.O. No. 19 of 2004 and A.O. No. 20 of 2004, preferred by Smt. Kusum and another, are dismissed. The judgment and awards, under appeal, are upheld. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

01-09-2004
RCP